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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

No. 1215

MARY CARNERA, General Administratrix of the Estate of SEVERINO CARNERA, deceased; and MARY CARNERA, Administratrix *ad Prosequendum* of the Estate of SEVERINO CARNERA, deceased,

*Petitioner,*

*vs.*

LANCASTER CHEMICAL CORPORATION,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

## BRIEF IN OPPOSITION

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## BRIEF IN OPPOSITION

### Counter-Statement of the Case

Respondent, Lancaster Chemical Corporation, adopts the citations to opinions below, jurisdictional statement, state-

ment of question presented and reference to statute involved as set forth in the Petition for Writ of Certiorari filed herein (Pet. 2).

This is a wrongful death action wherein both petitioner and her decedent are citizens of New Jersey. Jurisdiction of the District Court was sought to be based solely upon diversity of citizenship. The complaint alleged that respondent was a corporation organized under the laws of the State of New York with "plant and facilities in the Town of Carlstadt, Bergen County, New Jersey". There was no specific allegation at all as to respondent's citizenship.

During the course of pretrial proceedings, it appeared that respondent's plant and facilities in the Town of Carlstadt constituted its principal place of business, and that, accordingly, the District Court lacked subject matter jurisdiction in light of the 1958 amendment to 28 U.S.C.A. §1332(c). Petitioner was permitted to engage in further discovery proceedings directed to the jurisdictional issue, after which the Court *sua sponte* moved to dismiss the action for lack of jurisdiction. Following a hearing on the motion, the Court found as a fact that respondent's principal place of business was situate in the Town of Carlstadt, New Jersey, and concluded that respondent was therefore a citizen of New Jersey for diversity purposes under 28 U.S.C.A. §1332(c). Final judgment of dismissal for lack of jurisdiction over the subject matter was thereafter entered (App. C, Pet. 6a).

On petitioner's appeal to the Court of Appeals, the judgment of the District Court was affirmed (App. A, Pet. 1a; App. B, Pet. 4a).

Petitioner does not appear to challenge the factual findings below that respondent's principal place of business

within the meaning of 28 U.S.C.A. §1332(c) was situate in New Jersey. Rather, the sole contention now raised is that the 1958 amendment to 28 U.S.C.A. §1332(c), which provides that for diversity purposes "a corporation shall be deemed a citizen of any State by which it has been incorporated *and of the State where it has its principal place of business,*" applies only against corporate litigants which seek to invoke the diversity jurisdiction of the Federal Court, and was not intended to apply to preclude an individual from suing a foreign corporation irrespective of the location of its principal place of buisness (Pet. 3).

## Reasons Why the Writ Should Not Be Granted

A review of petitioner's contention regarding the construction of 28 U.S.C.A. §1332(c) demonstrates beyond reasonable debate a complete lack of any substance or merit. Furthermore, there is absolutely no real or apparent conflict between the decision of the lower courts herein and any applicable decision of this Court, nor is there any decision of any other Court of Appeal which in any way conflicts with the determination below. *Cf.* U. S. Sup. Ct. Rule 19, U.S.C.A. Petitioner's assertion (Pet. 2) that "the opinion below so far departs from the accepted and usual course of judicial proceedings as to warrant the exercise of this Court's supervision," is nothing more than specious.

## *ARGUMENT*

### 28 U.S.C.A. §1332(c) precludes diversity jurisdiction of an action by an individual citizen of the forum state against a foreign corporation which maintains its principal place of business in the forum state.

28 U.S.C.A. §1332(c) provides that for purposes of diversity jurisdiction, "a corporation shall be deemed a citizen of any State by which it has been incorporated *and*

of the State where it has its *principal place of business.*" (Emphasis added.) By reason of this section, corporations are said to have a "dual citizenship" for diversity purposes, so that a complaint against a corporate defendant must not only alleges the state in which the defendant was incorporated, but also the state wherein its principal place of business is located, so as to show that *both* such states of citizenship are diverse from that of the plaintiff. *Buell* v. *Sears Roebuck & Co.*, 321 F. 2d 468, 470 (10th Cir. 1963); *Dining Car Emp. Local No. 385* v. *Chicago, M., St. P. & P. R. Co.*, 323 F. 2d 224, 226-227 (7 Cir. 1963); *Testa* v. *Moore-McCormick Lines, Inc.*, 229 F. Supp. 154, 155 (S. D. N. Y. 1964); *Brandt* v. *Bay City Super Market*, 182 F. Supp. 937 939 (N. D. Cal. 1960). Where, as here, the complaint fails to allege the principal place of business of a corporate defendant, such omisison is fatal to the jurisdiction of the District Court, and alone justifies the dismissal of the action. *Dining Car Emp. Local No. 385* v. *Chicago, M., St. P. & P. R. Co., supra; Testa* v. *Moore-McCormick Lines, Inc., supra.*

It cannot be seriously disputed that the purpose of the 1958 amendment to 28 U.S.C.A. §1332 was to reduce congestion in the Federal Courts by curtailing their jurisdiction in diversity cases where jurisdiction is based on the fictional premise that a corporation, although essentially local in character, is nevertheless deemed a citizen of some other state because it was incorporated there. *Moore-McCormack Lines Inc.* v. *Ingalls Shipbuilding Corp.*, 194 F. Supp. 412 (S. D. N. Y. 1961); *Johnson* v. *Angelina Cas. Co.*, 177 F. Supp. 85, 87 (E. D. Tex. 1959), affirmed *sub nom., Canton* v. *Angelina Casualty Company*, 279 F. 2d 553 (5 Cir. 1960); *Harker* v. *Kopp*, 172 F. Supp. 180, 182 (N. D. Ill. 1959).

Petitioner contends, however, that the provisions of 28 U.S.C.A. §1332(c) are not applicable to a citizen-plaintiff of

New Jersey who files suit in a Federal Court against a defendant New York corporation, despite the presence of the principal place of business of the defendant in New Jersey. There is nothing in the language of the statute which supports this novel proposition, and the only authority cited by petitioner is a reference to certain remarks by Congressmen Smith, Celler and Keating during the course of debate on H.R. 11102, which subsequently was enacted as the amendment in question to 28 U.S.C.A. §1332. Although the remarks do point up the fact that the primary evil sought to be remedied arose out of the removal of state-court actions by corporate defendants, the resultant evil is the same whether it be the corporation itself, or an individual suing it, that brings an essentially local dispute into the Federal Court on the technical and fictional ground that the corporation happened to have been organized elsewhere. Thus, as is apparent from the further remarks of Congressman Keating during the course of debate, it seems clear that the amendment was intended to apply to *all* cases in the Federal Courts "brought by *or against* corporations having their principal place of business in the same State of which the other party was a resident . . .," and thus, that it precludes an individual citizen of the forum state from suing a foreign corporation in the Federal Court, where the foreign corporation has its principal place of business in the forum state. See 1958 Congressional Record (Vol. 104, Part 10), p. 12685, col. 1. (Emphasis added.) Furthermore, the foregoing interpretation of the 1958 amendment has been uniformly accepted by the lower Federal Courts in subsequent decisions. *Canton* v. *Angelina Cas. Co.*, 279 F. 2d 553 (5 Cir. 1960); *Martin* v. *Winn-Dixie Stores*, 242 F. Supp. 533 (W. D. S. C. 1965); *Huggins* v. *Winn-Dixie Greenville, Inc.*, 233 F. Supp. 667 (S. D. S. C. 1964); *Anderson* v. *Southern Bell Telephone & Telegraph Co.*, 209

F. Supp. 921 (M. D. Ga. 1962). As stated in 1 *Moore, Federal Practice,* §.77 [1.-2], p. 717.6, n.10 (2d ed. 1964):

> "It is clear that the new amendment applies to prevent natural citizens of the state in which the corporation has its principal place of business from suing the corporation, although it be chartered in another state, in the federal courts."

See also, authorities collected at *id.*, §0.77 [2.1], pp. 717.40-717.41, nn. 2-3.

In passing, it might also be noted that, as stated by Congressman Celler in the course of debate on the amendment in question:

> "The underlying purpose of diversity of citizenship legislation, which incidentally goes back to the beginning of the Federal judicial system, having been established by the Judiciary Act of 1789, is to provide a separate forum for out-of-state citizens against the prejudices of local courts and local juries by making available to them the benefit and safeguards of the Federal Courts." 1958 Congressional Record 12685, col. 2.

See also *Pease* v. *Peck*, 59 U. S. 595, 15 L. Ed. 518 (1855); *Lutz* v. *McNair*, 233 F. Supp. 871, 873 (E. D. Va. 1964), affirmed 340 F. 2d F. 2nd 709 (4 Cir. 1965); *Browne* v. *Hartford Fire Insurance Company*, 168 F. Supp. 796, 797 (N. D. Ill. 1959). Since petitioner herself is a citizen and resident of New Jersey, she is hardly in a position to complain of any local prejudice against her. Hence, there is no good reason why the doors of the Federal Courts in New Jersey should be open to her in the first place. Indeed, if the 1958 amendment to 28 U.S.C.A. §1332 were not applied to petitioner, she would then be permitted to

burden the Federal Court of her own State with an essentially tort action merely because the corporate defendant happened to have been incorporated in New York, thus perpetuating the very kind of jurisdictional abuse which the 1958 amendment was avowedly designed to eliminate.

It is accordingly submitted that there exists in this case no substantial issue of federal law or procedure which would justify review by this Court, and thus, no basis upon which to grant a writ of *certiorari*.

## CONCLUSION

**For all the foregoing reasons, it is respectfully urged that the petition for a writ of certiorari be denied.**

Respectfully submitted,

JOHN J. BUDD,
*Counsel for Respondent.*